



SECRETARY OF STATE
STATE OF INDIANA
SECURITIES DIVISION

Todd Rokita
Secretary of State

O. Wayne Davis
Securities Commissioner

TO: All Registered Indiana CCRCs COMPLIANCE ALERT

FROM: O. Wayne Davis, Indiana Securities Commissioner

DATE: November 2006

RE: Annual Disclosure Statements

The Staff of the Indiana Secretary of State, Securities Division, has observed a decline in the quality of Annual Disclosure Statements over recent years. In many cases, these Statements are not fulfilling statutory and regulatory requirements, and it appears that in some cases persons drafting the Statements are unfamiliar with what is required.

Ind. Code § 23-2-4-4 and 5 require that an Initial and Annual Disclosure Statement be filed with the Securities Commissioner and delivered to (a) a contracting party before execution of a continuing care agreement and (b) current residents upon request. The Disclosure Statement is intended to provide important information in an understandable manner to such persons.

The disclosure area that is of primary concern is Management's Discussion and Analysis of Financial Condition ("MD & A"). This requirement is set forth at 710 IAC 2-3-5(5). The MD & A is designed to allow the reader to look at the provider's business operations "through the eyes of management." Note, specifically, the verbs used in the regulation are "discuss" and "describe." Thus, the MD & A is not to be simply a listing of information from the financial statements. Rather, the financial information should be analyzed and discussed or described with reference to the items specified. The regulation is very specific as to what is being requested, and you should pay attention to and address the matters specified in each sentence. A copy of this provision is enclosed.

We view the Initial and Annual Disclosure Statement to be of critical importance in describing the provider and its business operations. Therefore, the Disclosure Statement should be reviewed and specifically approved by the board of directors of the provider and this approval documented in the minutes of the board. This review by the directors should provide a meaningful internal control and enhance compliance with statutory and regulatory requirements.

Questions regarding this Alert should be directed to Doreen L. Fuery, Chief Accountant, by telephone (317) 232-0737, fax (317) 233-3675, or e-mail at dfuery@sos.in.gov.

710 IAC 2-3-5(5): Management's Discussion and Analysis of Financial Condition:

- (A) **Liquidity:** Discuss the provider's ability to generate cash adequate to meet its needs for cash. In particular, discuss on both a long-term and a short-term basis any known trends that are reasonably likely to result in the provider's liquidity increasing or decreasing in a material way. If a cash shortage is identified, indicate the course of action the provider has taken or proposes to take to remedy the shortage, and identify and separately describe both internal and external sources of cash.
- (B) **Capital Resources.** Describe the provider's commitments for capital expansion, renovation, and other expenditures. Indicate the anticipated source of funds needed to fulfill such commitments. Discuss any expected changes in the mix of equity, debt, and any off-balance sheet financing arrangements.
- (C) **Results of Operations.** Discuss the provider's results of operations during the past three (3) years, using year-to-year comparisons when practical. Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. Also describe any known trends or uncertainties that have had or that the provider reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operation. (Emphasis added).
- (D) **Other.** Discuss any other information necessary to an understanding of the provider's financial condition, changes in financial condition, and results of operations. Focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amount of:
- (i) matters that would have an impact on future operations and have not had an impact in the past, and
 - (ii) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.